

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Michael R. CASWELL

Application No.: 10/502,148

Confirmation No.: 9036

Filed: March 2, 2005

Art Unit: 3742

For: COFFEE DISPENSING DEVICE AND
METHOD

Examiner: R. ALEXANDER

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT UNDER 37 C.F.R. § 1.705(b)(2)

Dear Sirs:

1. This statement is respectfully submitted in support of the “Application for Patent Term Adjustment Under 37 C.F.R. § 1.705(b)” being filed herewith for the above-referenced patent application. In view of the following, it is respectfully requested that Applicant be granted a Patent Term Adjustment of **1224** days.

2. Pursuant to 37 C.F.R. § 1.705(b)(2)(i), Applicant respectfully submits that the correct period of Patent Term Adjustment is 1224 days. Applicant is entitled to an adjustment of 703 days due to Examination Delays (A-delays) pursuant to 37 C.F.R. §§ 1.702(a) and 1.703(a). Applicant is also entitled to an adjustment of 778 days due to Three-Year Delays (B-delays) pursuant to 35 U.S.C. § 154(b) and 37 C.F.R. § 1.702(b), which requires issuance of a patent within three (3) years after the date on which the national stage of the application was commenced under 35 U.S.C. 371(b) or (f). Pursuant to 37 C.F.R. § 1.704 (a) the Patent Term

Adjustment is reduced by 34 days due to Applicant delays. The Patent Term Adjustment is further reduced by 223 days of overlap between A-delays and B-delays pursuant to 37 C.F.R. § 1.703(f). Accordingly, Applicant is entitled to a Patent Term Adjustment that is equivalent to the total of the sum of 703 days of A-delays and 778 days of B-delays minus the sum of 34 days of Applicant delays and 223 days of overlap. Accordingly, the correct Patent Term Adjustment is 1224 days.

3. The relevant dates pursuant to 37 C.F.R. § 1.705(b)(2)(iii) and the adjustment that the patent will be entitled to pursuant to 37 C.F.R. § 1.703(f) are set forth as follows:

A-Delays: USPTO Examination Delays Pursuant to 37 C.F.R. § 1.702(a) and § 1.703(a)

Applicant does not dispute the U.S. Patent and Trademark Office (USPTO) A-delays calculated under 37 C.F.R. § 1.703(a). Applicant notes that the Notice of Allowance allotted 703 days of USPTO A-delays.

B-Delays: USPTO Three-Years Delay Pursuant to 37 C.F.R. § 1.702(b) and § 1.703(b)

In the instant case, the Patent Term Adjustment listed in the Notice of Allowance mailed by the USPTO on February 27, 2009 is 672 days, corresponding only to the A-delays while excluding all B-delays. However, Applicant believes that this Patent Term Adjustment has been made in error. Applicant respectfully notes that national stage of the present application commenced under 35 U.S.C. 371(b) on July 23, 2004. The three-year period, for purposes of calculating B-delays, ended on July 23, 2007. Accordingly, pursuant to 37 C.F.R. § 1.703(b), Applicant is entitled to a Patent Term Adjustment that is equivalent to the sum of the number of days in the period beginning on July 23, 2007 and ending on the date that the patent issues. Applicant notes that the Notice of Allowance states that the patent will be issued on the Tuesday immediately preceding the date that is 28 weeks from the mailing date of the Notice of Allowance. The Notice of Allowance was mailed on February 27, 2009. Accordingly, the patent will issue no earlier than Tuesday September 8, 2009. The sum of the period beginning on July 23, 2007 and ending on September 8, 2009 is 778 days.

Overlapping Periods of USPTO A-Delays and B-Delays Pursuant to 37 C.F.R. § 1.703(f)

As set forth in 37 C.F.R. § 1.703(f), the period of adjustment based on the grounds set forth in 37 C.F.R. § 1.702 is the sum of all periods of Examination Day and the maximum period of Three Years Delay, to the extent these periods of delay are not overlapping. Pursuant to 37 C.F.R. 1.703(f), the period of adjustment will not exceed the actual number of days the issuance of the patent was delayed. Applicant notes that the U.S. District Court of D.C. has recently clarified that under 35 USC § 154(b)(2)(A) the only way a period of Examination Delay (“A-delay”) and a period of Three-Years Delay (“B-delay”) can “overlap” is if they occur on the same calendar day or days. See *Wyeth v. Dudas*, No. 07- 1492. 2008 U.S. Dist. LEXIS 76063 at 9 (D. D.C. Sept. 30, 2008). In the instant case, the B-delays began on July 23, 2007 and the USPTO A-delays ended on March 2, 2008. Accordingly, the A-delays and B-delays overlapped on these 223 calendar days.

Applicant Delays Pursuant to 37 C.F.R. § 1.704(a)

Applicant does not dispute the USPTO’s initial calculation of the Applicant delays under 37 C.F.R. § 1.704(a). Applicant notes that the Notice of Allowance states that Applicant accrued 21 days of Applicant delays. However, Applicant also notes that a Supplemental IDS was filed on April 24, 2009 (after the mailing of the Notice of Allowance). Responsive to this, the Office issued a Supplemental Notice of Allowance on May 7, 2009. Pursuant to 1.704(c)(10), the Applicant delays can include the number of days beginning on April 24, 2009 and ending on May 7, 2009 (*i.e.*, 13 days). Accordingly, Applicant respectfully submits that the total Applicant delays should be 34 days.

4. In accordance with 37 C.F.R. 1.705(b)(2)(iii), Applicant submits that the above-referenced application is not subject to a terminal disclaimer.
5. In view of 37 C.F.R. 1.705(b)(2)(iv)(A), Applicant submits that they are unaware of any circumstances during the prosecution of the application, beyond the days already noted above in regard to Applicant delays, that would constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.
6. In view of the foregoing, it is respectfully requested that this Application for Patent Term

7. In accordance with 37 C.F.R. 1.705(b)(2)(i), Applicant submits herewith the fee set forth in 37 C.F.R. 1.18(e). It is Applicant's understanding that this \$200.00 fee is required for this application for Patent Term Adjustment. However, should any additional fees be necessary, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 50-4876, under Order No. CPB-001US.

Respectfully submitted,

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